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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,041	10/27/2000	Roberto Cappelletti	99CA24453248	7413

7590

09/24/2003

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EXAMINER

VO, DON NGUYEN

ART UNIT

PAPER NUMBER

2631

DATE MAILED: 09/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/699,041

Applicant(s)

CAPPELLETTI ET AL.

Examiner

DON N VO

Art Unit

2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-34 is/are allowed.
- 6) ☒ Claim(s) 7, 21 and 35-39 is/are rejected.
- 7) ☒ Claim(s) 8-20 and 40-42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgment

1. This Office Action is responsive to the Amendment filed on 7/3/03.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 7, 21, and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argyroudis (5,892,758) in view of Santore et al (5,615,211).

Regarding claims 7 and 35-39, Argyroudis, as shown in figure 2, teaches a data transceiver station comprising: a modem (226, 234) to be connected to a transmission line for receiving digital data; a microprocessor (214) connected to said modem for receiving demodulated digital data therefrom; and an interface circuit (224) connected between said microprocessor and said modem. See also column 12, lines 14-60. Argyroudis fails to particularly teach the interface circuit being capable of operating between the Packet Mode transmission or a Bit Mode transmission. However, Santore teaches communication system having interface being capable of operating between the Packet Mode transmission or a Bit Mode transmission. See column 5, line 46 to column 6, line 6. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the interface circuit (224) by employing the teaching of Santore so that the system of Argyroudis can support both Packet Mode transmission and Bit Mode transmission. Such modification would extend the operating capability of the system since it could operate in two modes.

Regarding claim 21, Argyroudis fails to particularly teach the modem (226, 234) to provide the demodulated digital data based upon frequency shift keying demodulation. However, it is well known in the art of digital communication to have a modem to modulate or demodulate data using FSK technique. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the FSK modulation/demodulation technique for

the modem (226, 234) of Argyroudis since it is just one type of digital communications.

Allowable Subject Matter

5. Claims 22-34 are allowed over prior art of record.
6. Claims 8-20 and 40-42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed on 7/3/03 have been fully considered but they are not persuasive.
8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Argyroudis teaches the interface 224 could be implemented for supporting the communication of higher data rates over the twisted pair transceiver 234. See column 12, lines 39-42. That is, Argyroudis suggests the interface 224 being capable of communicating between two modes of data rates. The higher data rate is over the twisted pair transceiver 234 and the lower is over the power line transceiver 226. As well known and admitted by applicant in the **Background of the Invention** section of the instant application, the main different between the Packet Mode communication and the Bit Mode communication is the Packet Mode communication having higher data rate. Therefore, suggestion is being taught by Argyroudis. What Argyroudis fails to teach is the specifying of the **Packet Mode communication** and the **Bit Mode communication**. That is why the interface card 30d of Santore et al (5,615,211) is introduced because Santore's interface 30d supports the **Packet Mode communication** and the **Bit Mode communication**. That is, Santore's interface 30d supports different data rates.

Based on the above rationale, it is still believed that the rejection is proper and still maintained.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DON N VO whose telephone number is (703) 305-4885. The examiner can normally be reached on 8:30AM-5:00PM, Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MOHAMMAD GHAYOUR can be reached on (703) 306-3034. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800.

A handwritten signature in black ink, appearing to read 'Don N VO', with a stylized, flowing script.

DON N VO
Primary Examiner
Art Unit 2631